

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE: NEW ENGLAND COMPOUNDING)
PHARMACY, INC., PRODUCTS LIABILITY)
LITIGATION)
) MDL No.: 2419
) Master Docket No.: 1:13-md-2419-FDS
_____)
THIS DOCUMENT RELATES TO:)
)
_____)
All Actions Against St. Thomas Neurosurgical)

**DECLARATION OF BENJAMIN A. GASTEL IN SUPPORT OF PLAINTIFFS’
STEERING COMMITTEE’S MOTION TO COMPEL COMPLIANCE WITH
SUBPOENA TO MICHAEL O’NEAL**

Benjamin A. Gastel declares, under penalty of perjury on the date identified below, as follows:

1. I am an attorney at Branstetter, Stranch & Jennings, PLLC, and our firm sits on the Plaintiffs’ Steering Committee (“PSC”) in the above-styled lawsuit (the “MDL”). I submit this declaration in support of the contemporaneously filed Plaintiffs’ Steering Committee’s Motion to Compel Compliance with Subpoena to Michael O’Neal.

2. Attached as Exhibit 1 is a true and correct copy of the PSC’s August 19, 2015 subpoena to Michael O’Neal.

3. Attached as Exhibit 2 are excerpts from the transcript of the February 4, 2015 Deposition of Debra Schamberg, R.N.

4. One of the plaintiffs in the MDL, Wayne Reed, initially filed a suit related to the fungal meningitis outbreak in the Circuit Court of Davidson County, Tennessee, styled as *Wayne Reed v. St. Thomas Outpatient Neurosurgical Center, LLC, et al.*, No. 13C417 (hereinafter, “*Reed*”). St. Thomas Neurological Center, LLC (“St. Thomas Neurosurgical”) was a defendant in that action and participated in discovery. On April 30, 2013, plaintiff Reed moved to compel

St. Thomas Neurosurgical to produce information over which it claimed privilege. In response, St. Thomas Neurosurgical filed affidavits and other evidence in support of its claim of privilege, including redacted and unredacted versions of contracts between Mr. O'Neal and St. Thomas Neurosurgical.

5. Attached as Exhibit 3 is a copy of the Affidavit of Mr. O'Neal ("O'Neal Affidavit") filed by St. Thomas Neurosurgical in *Reed*. The O'Neal Affidavit attached two exhibits: (1) a March 20, 2007 "Pharmacy Consulting Contract" between Mr. O'Neal and St. Thomas Neurosurgical and (2) an unredacted version of a "Consulting Pharmacist Agreement" between Mr. O'Neal and St. Thomas Neurosurgical. The second exhibit to the O'Neal Affidavit appears to be missing a page or pages of the agreement.

6. Attached as Exhibit 4 is a redacted version of the "Consulting Pharmacist Agreement" filed by St. Thomas Neurosurgical in *Reed*.

7. Attached as Exhibit 5 is a Notice of Filing the Affidavit of Ms. Schamberg, filed by St. Thomas Neurosurgical in *Reed*.

8. Attached as Exhibit 6 are unredacted versions of the two contracts between St. Thomas Neurosurgical and O'Neal, filed by St. Thomas Neurosurgical in *Reed* in a supplemental filing. The second contract appears to be missing certain pages.

9. I have compared the versions of the O'Neal contracts produced by St. Thomas Neurosurgical in the state case, which collectively appear to contain all of the relevant pages. Correcting for apparent pagination errors and for clarity of the record, I have attached the March 20, 2007 contract between O'Neal and St. Thomas Neurosurgical as Exhibit 7, and I have attached as Exhibit 8 a copy of the second contract between O'Neal and St. Thomas Neurosurgical, which is complete except for one redaction on one page.

10. Attached as Exhibit 9 is a true and correct copy of a May 23, 2013 Order by the Davidson County, Tennessee Circuit Court in *Reed*.

11. On June 11, 2013, plaintiff Reed filed a notice of voluntarily dismissal, which the Circuit Court granted on June 18, 2013. On September 12, 2013, Reed refiled the lawsuit in the U.S. District Court for the Middle District of Tennessee, and the case was transferred and consolidated into the MDL on October 15, 2013.

Executed on this 24th day of November, in Nashville, Tennessee.

/s/ Benjamin A. Gastel

Benjamin A. Gastel